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Technology Center 2100

In re Application of: LUBBERS, et al.
Application No. 10/658,982
Filed: September 10, 2003
For: ADAPTIVE MAPPING

DECISION ON PETITION
TO MAKE SPECIAL
(ACCELERATED EXAMINATION)
UNDER M.P.E.P. §708.02 (VIII)

This is a decision on the Request for Reconsideration filed February 15, 2006 on the petition to make special under 37 C.F.R. §102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination, originally filed on July 11, 2005, and dismissed on December 15, 2005.

The Petition is **DENIED**.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

- (a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
- (b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;
- (c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;
- (d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
- (e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The renewed petition filed February 15, 2006 fails to adequately meet requirement (e) of the criteria set forth above. With respect to requirement (e), for applicant's convenience, note 37 CFR § 1.111 (b) and (c) reproduced in part below:

(b) **The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.** A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

(c) **the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. The applicant or patent owner must also show how the amendments avoid such references or objections.**

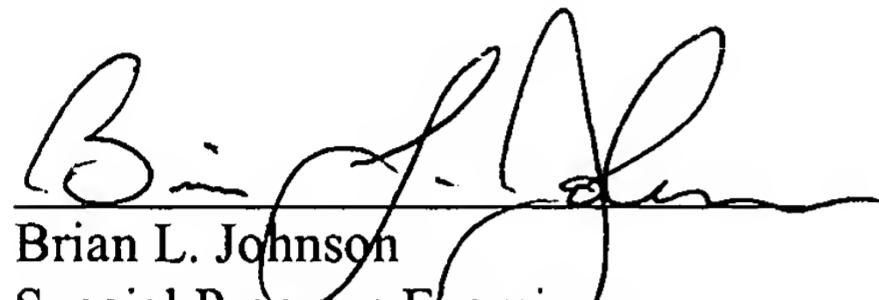
In the petition filed February 15, 2006, Petitioner fails to provide a "detailed discussion of the references" with the requisite particularity that illuminates the salient prior art issues relative to the claimed subject matter. Petitioner's **cursory treatment** of each of the references does not detail, with the particularity called for under section (e), the relevancy of the prior art pedagogy in order to sufficiently set forth a case distinguishing the limitations claimed to be patentable in relation to the given reference.

In the discussion of the references, Petitioner is required to point out (substantively detail) the prior art elements and associations germane to the claim(s) to fully flesh-out the comparison between the referenced prior art and Applicant's claimed features. The petition must specifically show, **for each independent-claim**, specific language that distinguishes over each given reference in order to specify "how the claimed subject matter is patentable over the references" that are "deemed to be most closely related to the subject matter encompassed by the claims." [emphasis added]. Petitioner must provide a detailed discussion of the references, which discussion **must clearly point out** the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited, including where necessary, reference to the figures and/or page and line numbers. Note, for example, a summary of the patent abstract does not point out substantive detail as is required.

The instant application currently contains three independent claims, i.e. 1, 16 and 29 wherein independent claim 29 was added with the amendment filed April 13, 2006. The instant petition fails to address patentable novelty of newly added claim 29. In addition, the discussion of patentable novelty presented in the instant petition with respect to independent claims 1 and 16, i.e. "*fails to disclose a method of maintaining a directory for a data container comprising determining that a sparse directory structure is to be changed; and reconstructing said sparse directory structure into a fully populated directory structure ... as set forth by claim 1*" and "*with regard to independent claim 16, fails to disclose a data storage system comprising a data storage container; and a controller that defines a sparse directory structure for said data container, determines that said sparse directory structure is to be changed, and reconstructs said sparse directory structure into a fully populated directory structure*", is **not applicable to claim 29**. Newly presented claim 29 is clearly the broadest claim pending in the instant application with the alternative recitation of "*A data storage system comprising a controller*

configured for selectively constructing either a sparse directory structure characterized as a linked list for a data container or a fully populated directory structure characterized as an array for the same data container.”

Accordingly, the Petition to Make Special **DENIED** since all of the requirements for special status under MPEP § 708.02(VIII) have NOT been met. The application is being returned to the Examiner's docket to await examination in its proper turn based on its effective filing date.



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